

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DOUGLAS STILLMAN,

Petitioner,

v.

CASE NO. 2:05-cv-1119

ERNIE MOORE, Warden,

**JUDGE HOLSCHUH
MAGISTRATE JUDGE ABEL**

Respondent.

OPINION AND ORDER

On June 21, 2006, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 be dismissed. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*.

Petitioner objects to the Magistrate Judge's recommendation that claim one, in which petitioner asserts that he was sentenced in violation of *Blakely v. Washington*, 542 U.S. 296 (2004), be dismissed as procedurally defaulted. Petitioner contends that he was not required to present the claim to the Ohio Supreme Court in a timely manner because the Ohio appellate courts had held that *Blakely* was not applicable to Ohio's sentencing statutes, and the Ohio Supreme Court had not yet issued its decision in *State v. Foster*, 109 Ohio St.3d 1 (2006), holding to the contrary, at the time of his appeal. Petitioner also again argues that this Court should consider the merits of claim one because failure to do so would constitute a manifest miscarriage of justice. Petitioner objects to the Magistrate Judge's recommendation that claim two be dismissed for failure to present an issue appropriate for federal habeas corpus review.

This Court is not persuaded by petitioner's arguments. The fact that the Ohio Supreme Court

had not yet resolved the conflict in Ohio's appellate courts regarding whether *Blakely* invalidated Ohio's sentencing scheme, did not mean that there was no adequate remedy in the state courts for resolution of petitioner's claim. Additionally, the record simply fails to reflect that petitioner is the victim of a manifest miscarriage of justice so as to permit federal habeas corpus review of his procedurally defaulted claim. *See Souter v. Jones*, 345 F.3d 577, 590 (6th Cir. 2005). Finally, and for the reasons discussed in the Magistrate Judge's *Report and Recommendation*, this Court agrees that petitioner has failed to present in claim three any issue appropriate for federal habeas corpus review.

Pursuant to 28 U.S.C. 636(b)(1), this Court has conducted a *de novo* review of those portions of the *Report and Recommendation* objected to by petitioner. For the foregoing reasons, and for the reasons detailed in the Magistrate Judge's *Report and Recommendation*, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**.

This action is hereby **DISMISSED**.

Date: September 6, 2006

/s/ John D. Holschuh
JOHN D. HOLSCHUH
United States District Judge